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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,160	09/09/2003	Emmanuel Marilly	Q77141	1014
23373	7590	03/14/2006	EXAMINER DWIVEDI, MAHESH H	
SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037			ART UNIT	PAPER NUMBER 2168

DATE MAILED: 03/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/657,160	MARILLY ET AL.	
	Examiner	Art Unit	
	Mahesh H. Dwivedi	2168	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 09 September 2003.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-20 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 09 September 2003 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>09/09/2003</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement (IDS) submitted on 09/09/2003 has been received, entered into the record, and considered. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Remarks

2. The preliminary amendment submitted on 01/14/2004 has been received, entered into the record, and considered. The modified parts include the modification of claims 10 and 20.

Specification

3. The disclosure is objected to because of the following informalities: On page 7, line 15, “**characterise**” is misspelled and should be changed to “**characterize**”. Appropriate correction is required.

Claim Objections

4. Claims 1-19 are objected to because of the following informalities: The term “**characterised**”, which appears in all of the aforementioned claims, is misspelled and should be changed to “**characterized**”.

Claim 20 is objected to for incorporating the deficiencies of parent claim 1.

Appropriate correction is required.

Claims 4 and 14 are objected to because of the following informalities: The term “**(MD)**” should be changed to “**(Market Data)**”.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Barkan et al.** (U.S. Patent 6,925,493) and in view of **Tunnicliffe et al.** (U.S. Patent 6,272,110).

7. Regarding claim 1, **Barkan** teaches a device comprising:
- A) processing means (5) arranged so as to determine primary data representing a state of use of the network (N) by at least one user who has made a service level agreement, or "SLA", with an operator of the said network, from the said management data (Column 2, lines 41-46); and
 - B) then to compare the said state of use with ancillary data representing the said SLA, so as to determine an action to be undertaken in the event of the detection of at least one difference between the said primary data and the said ancillary data (Column 2, lines 41-46).

Barkan does not explicitly teach:

- C) the said processing means (5) being arranged in order to determine the said action to be undertaken amongst an action group comprising a proposal to modify the SLA made between the said user and the said operator and/or a proposal to modify the services and/or resources of the said network (N); and
- D) to adapt at least some of the SLA modification proposals according to the said difference detected.

Tunnicliffe, however, teaches "**the said processing means (5) being arranged in order to determine the said action to be undertaken amongst an action group comprising a proposal to modify the SLA made between the said user and the said operator and/or a proposal to modify the services and/or resources of the said network (N)**" as "the customer obtains predicted values for his bandwidth levels, for example, and this information is used automatically by his agent

on his behalf to renegotiate the service level agreement" (Column 2, lines 42-46), and "to adapt at least some of the SLA modification proposals according to the said difference detected" as "an agent reasons about an offer and either accepts, rejects or generates a counter-offer is represented by a negotiation model" (Column 6, lines 53-55).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of the cited references because teaching **Tunnicliffe's** would have allowed **Barkan's** to provide a simple and easy to use method to manage a customer network with different customers having different priorities and requirements, as noted by **Tunnicliffe** (Column 1, lines 37-41).

Regarding claims 2 and 12, **Barkan** further teaches a device and method comprising:

A) characterised in that the said primary data represent a use of at least one service and/or of resources (Column 2, lines 41-46, Column 5, lines 35-47).

Regarding claim 3, **Barkan** does not explicitly teach a device comprising:

A) characterised in that the said processing means (5) are arranged so as to adapt at least some of the proposals to modify the services and/or resources of the said network according to at least one SLA modification proposal.

Tunnicliffe, however, teaches "characterised in that the said processing means (5) are arranged so as to adapt at least some of the proposals to modify

the services and/or resources of the said network according to at least one SLA modification proposal" as "an agent reasons about an offer and either accepts, rejects or generates a counter-offer is represented by a negotiation model" (Column 6, lines 53-55).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of the cited references because teaching **Tunnicliffe's** would have allowed **Barkan's** to provide a simple and easy to use method to manage a customer network with different customers having different priorities and requirements, as noted by **Tunnicliffe** (Column 1, lines 37-41).

Regarding claim 4, **Barkan** further teaches a device comprising:

A) characterised in that the said processing means (5) are arranged so as to adapt at least some of the proposals to modify the services and/or resources of the said network according to tertiary data (MD) (Column 5, lines 30-34).

Regarding claim 5, **Barkan** does not explicitly teach a device comprising:

A) characterised in that the said processing means (5) are arranged so as to determine at least some of the states of use in the form of a usage profile (SUP) in a chosen time interval, from management data corresponding to the said time interval.

Tunnicliffe, however, teaches "**characterised in that the said processing means (5) are arranged so as to determine at least some of the states of use in the form of a usage profile (SUP) in a chosen time interval, from management**

data corresponding to the said time interval" as "the trends analyser is trained using historic logs of network traffic, allowing its neural network to learn expected network traffic behavioral patterns. Once trained the trends analyser is able to predict future traffic demand based on the current monitored traffic, which may be presented to the user graphically" (Column 5, lines 4-9).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of the cited references because teaching **Tunnicliffe's** would have allowed **Barkan's** to provide a simple and easy to use method to manage a customer network with different customers having different priorities and requirements, as noted by **Tunnicliffe** (Column 1, lines 37-41).

Regarding claim 6, **Barkan** further teaches a device comprising:

A) characterised in that the said processing means (5) are arranged so as to determine an action to be undertaken from several states of use associated with different users or a state of use associated with a group of users (Column 5, lines 30-34).

Regarding claim 7, **Barkan** does not explicitly teach a device comprising:

A) characterised in that the said processing means (5) are arranged so as to automatically initiate an SLA modification when at least one condition is satisfied.

Tunnicliffe, however, teaches "**characterised in that the said processing means (5) are arranged so as to automatically initiate an SLA modification**" as "the customer obtains predicted values for his bandwidth levels, for example, and this

information is used automatically by his agent on his behalf to renegotiate the service level agreement" (Column 2, lines 42-46, Figure 1), and "**when at least one condition is satisfied**" as "traffic levels are only one example of an operations measurement that can be predicted and used for network management" (Column 3, lines 22-31, Figure 1).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of the cited references because teaching **Tunnicliffe's** would have allowed **Barkan's** to provide a simple and easy to use method to manage a customer network with different customers having different priorities and requirements, as noted by **Tunnicliffe** (Column 1, lines 37-41).

Regarding claim 8, **Barkan** further teaches a device comprising:

A) characterised in that the said processing means (5) are arranged so as to automatically initiate the said SLA modification when it is associated with an increase in the tariff of the user less than a penalty representing the violation of the SLA by the user (Column 2, lines 41-46).

Regarding claim 9, **Barkan** further teaches a device comprising:

A) characterised in that the said processing means (5) are arranged so as to make their determinations periodically (Column 9, lines 56-60).

Regarding claim 10, **Barkan** further teaches a device comprising:

A device (1) for managing a communications network (N), characterised in

that it comprises a processing device (2) according to claim 1 (Column 5, lines 30-53).

Regarding claim 11, **Barkan** teaches a method comprising:

- A) determining primary data representing a state of use of the network (N) by at least one user who has made a service level agreement, or "SLA", with an operator of the said network, from the said management data (Column 2, lines 41-46); and
- B) then comparing the said state of use with ancillary data representing the said SLA, so as to determine an action to be undertaken in the event of the detection of at least one difference between the said primary data and the said ancillary data (Column 2, lines 41-46);

Barkan does not explicitly teach:

- C) the said action to be undertaken is determined in an action group comprising a proposal to modify the SLA made between the said user and the said operator and/or a proposal to modify the services and/or resources of the said network (N); and
- D) at least some of the SLA modification proposals are adapted according to the said difference detected.

Tunnicliffe, however, teaches "**the said action to be undertaken is determined in an action group comprising a proposal to modify the SLA made between the said user and the said operator and/or a proposal to modify the services and/or resources of the said network (N)**" as "**the customer obtains predicted values for his bandwidth levels, for example, and this information is used automatically by his agent on his behalf to renegotiate the service level agreement**"

(Column 2, lines 42-46), and “**at least some of the SLA modification proposals are adapted according to the said difference detected**” as “an agent reasons about an offer and either accepts, rejects or generates a counter-offer is represented by a negotiation model” (Column 6, lines 53-55).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of the cited references because teaching **Tunnicliffe’s** would have allowed **Barkan’s** to provide a simple and easy to use method to manage a customer network with different customers having different priorities and requirements, as noted by **Tunnicliffe** (Column 1, lines 37-41).

Regarding claim 13, **Barkan** does not explicitly teach a method comprising:

A) characterised in that at least some of the proposals to modify the services and/or resources of the said network (N) are adapted according to at least one proposal to modify the SLA.

Tunnicliffe, however, teaches “**characterised in that at least some of the proposals to modify the services and/or resources of the said network (N) are adapted according to at least one proposal to modify the SLA**” as “an agent reasons about an offer and either accepts, rejects or generates a counter-offer is represented by a negotiation model” (Column 6, lines 53-55).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of the cited references because teaching **Tunnicliffe’s** would have allowed **Barkan’s** to provide a simple and easy to use

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method to manage a customer network with different customers having different priorities and requirements, as noted by **Tunnicliffe** (Column 1, lines 37-41).

Regarding claim 14, **Barkan** further teaches a method comprising:

A) characterised in that at least some of the proposals to modify the services and/or resources of the said network are adapted according to tertiary data (MD) (Column 5, lines 30-34).

Regarding claim 15, **Barkan** does not explicitly teach a method comprising:

A) characterised in that at least some of the states of use are determined in the form of a usage profile (SUP) in a chosen time interval, from management data corresponding to the said time interval.

Tunnicliffe, however, teaches “**characterised in that at least some of the states of use are determined in the form of a usage profile (SUP) in a chosen time interval, from management data corresponding to the said time interval**” as “the trends analyser is trained using historic logs of network traffic, allowing its neural network to learn expected network traffic behavioral patterns. Once trained the trends analyser is able to predict future traffic demand based on the current monitored traffic, which may be presented to the user graphically” (Column 5, lines 4-9).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of the cited references because teaching **Tunnicliffe's** would have allowed **Barkan's** to provide a simple and easy to use

method to manage a customer network with different customers having different priorities and requirements, as noted by **Tunnicliffe** (Column 1, lines 37-41).

Regarding claim 16, **Barkan** further teaches a method comprising:

A) characterised in that some actions to be undertaken are determined from several states of use associated with different users or a state of use associated with a group of users (Column 5, lines 30-34).

Regarding claim 17, **Barkan** does not explicitly teach a method comprising:

A) characterised in that an SLA modification is instituted automatically when at least one condition is satisfied.

Tunnicliffe, however, teaches “**characterised in that an SLA modification is instituted automatically**” as “the customer obtains predicted values for his bandwidth levels, for example, and this information is used automatically by his agent on his behalf to renegotiate the service level agreement” (Column 2, lines 42-46, Figure 1), and “**when at least one condition is satisfied**” as “traffic levels are only one example of an operations measurement that can be predicted and used for network management” (Column 3, lines 22-31, Figure 1).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of the cited references because teaching **Tunnicliffe's** would have allowed **Barkan's** to provide a simple and easy to use

method to manage a customer network with different customers having different priorities and requirements, as noted by **Tunnicliffe** (Column 1, lines 37-41).

Regarding claim 18, **Barkan** further teaches a method comprising:

A) characterised in that the said SLA modification is instituted when it is associated with an increase in the tariff of the user less than a penalty representing the violation of the SLA by the user (Column 2, lines 41-46).

Regarding claim 19, **Barkan** further teaches a method comprising:

A) characterised in that the determinations are made periodically (Column 9, lines 56-60).

Regarding claim 20, **Barkan** further teaches a device comprising:

A) Use of the method, processing device (2) and management device (1) according to claim 1 in networks chosen from a group comprising Internet (IP), ATM, Frame Relay, SDH and WDM networks (Column 3, lines 66-67-Column 4, lines 1-4).

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent 5,893,905 issued to **Main et al.** on 13 April 1999. The subject matter disclosed therein is pertinent to that of claims 1-20 (e.g., methods to monitor and alert service level agreement discrepancies).

U.S. Patent 6,681,232 issued to **Sistanizadeh et al.** on 20 January 2004. The subject matter disclosed therein is pertinent to that of claims 1-20 (e.g., methods to monitor and overlook service level management).

U.S. PGPUB 2003/0229759 issued to **Doyle et al.** on 11 December 2003. The subject matter disclosed therein is pertinent to that of claims 1-20 (e.g., methods to monitor and overlook service level management).

Contact Information

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mahesh Dwivedi whose telephone number is (571) 272-2731. The examiner can normally be reached on Monday to Friday 8:20 am – 4:40 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tim Vo can be reached (571) 272-3642. The fax number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mahesh Dwivedi

Patent Examiner

Art Unit 2168


February 28, 2006


Leslie Wong

Primary Examiner